

# State Supreme Court Rules in Fired Kitsap Deputy's Case

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OLYMPIA —

A split state Supreme Court has ruled that former Kitsap County Sheriff's deputy Brian LaFrance should have been disciplined, but not fired, for a series of misdeeds that ultimately led to his dismissal.

In firing LaFrance in 2001, Sheriff's Office leadership accused him of having been "untruthful," improperly keeping case files in a child pornography case, improperly securing a pistol in a desk drawer and lying to a supervisor about its location, and failing to pursue cases.

Now, according to LaFrance's attorney Jim Cline, he stands to possibly get his job back.

"We're hopeful that the court is going to reinstate," Cline said, adding that what might happen and whether LaFrance would pursue it will "be a question."

It wasn't immediately clear whether LaFrance will be rehired, whether the county will continue to fight the issue or whether a settlement might be reached.

Cline called the decision an affirmation of collective bargaining laws. Kitsap County officials called it a blow to the power of elected officials to fire dishonest police.

The Supreme Court ruling doesn't address LaFrance's misconduct. It only covers whether an arbitrator had the power to reinstate LaFrance. The Kitsap County Deputy Sheriff's Guild, like many unions, have a contract with the county that stipulates a binding arbitration process in cases of employee discipline.

The arbitrator's 2001 ruling to reinstate LaFrance was the subject of extensive litigation. He was rehired in 2005, but the county fired him again shortly thereafter. The state Court of Appeals ruled in 2007 that Kitsap County was within its rights in firing LaFrance.

The county had argued that prosecutors would have to disclose LaFrance's history of dishonesty in every case he participated in, making him an unemployable deputy.

The court examined whether the arbitrator's decision to reinstate LaFrance violated an "explicit, well defined, and dominant public policy," and ruled that there was no policy preventing the employment of dishonest police officers.

“The cases requiring disclosure of an officer’s history of untruthfulness have not commented on whether such an officer could continue to be employed,” majority author Justice Susan Owens wrote.

In a sharply-worded dissent, Justice James M. Johnson wrote that “the arbitrator’s decision requiring Kitsap County to reinstate a deputy sheriff, who was found to be not only incompetent, but also untruthful, violates public policies and should be vacated. That the courts would enforce an order requiring employment of a deputy sheriff who committed numerous acts of misconduct, including dishonesty, mishandling evidence, and disobeying direct orders, greatly offends the public policies of this state.”

Kitsap County deputy prosecutor Jackie Aufderheide, who argued the case for the county, said the court’s decision strips elected officials of their ability to terminate employees who are unfit to perform their duties and puts that power in the hands of unelected arbitrators.

“I don’t think the issue is resolved,” she said. “You’re taking the crucial decision-making authority out of the hands of elected officials.”

Any legal remedy would require either legislative action or an appeal to the United States Supreme Court — which hears few cases each year.

Aufderheide said the court, during oral arguments, suggested the county could renegotiate what powers arbitrators wield. Unions likely would object to such renegotiations and the scenario could put an arbitrator in the role of determining the power of arbitrators.

“It’ll be an arbitration issue if we can’t agree,” she said.

Cline, representing LaFrance and the Kitsap County Deputy Sheriff’s Guild, called the decision an affirmation of a labor contract and said that arbitration saves the county and unions money by quickly, decisively resolving disputes.

“You win or lose, life moves on,” he said. “You move on.”

He called the decision a victory for organized labor.

“It’s a big, but not surprising win, for labor groups,” Cline said.

The court also ruled that LaFrance is not entitled to any back pay for the time between when he was fired and when he was rehired.

Justices Charles Johnson, Barbara Madsen, Richard Sanders, Tom Chambers and Debra Stephens signed the majority opinion. Justices Gerry Alexander, and Teresa Kulik, a justice pro tem, signed the dissent.



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